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8 November 2032

§ 9(2)(a)

By email: § 9(2)(a)
Ref: H2023032335

Tēnā koe § 9(2)(a)

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to Manatū Hauora (the Ministry of Health) on 11 October 2023 for information regarding the rights of asylum seekers to access health care. You requested:

“The policy sections outlining what medical services were available to asylum seekers from 1997-2010.

At the points where the policy has been amendment, advise documents that record why the change has happened.”

Medical services available to asylum seekers from 1997

The Health and Disability Services Eligibility Direction sets out the eligibility criteria for publicly funded (free or subsidised) health and disability services in New Zealand. As the term ‘asylum seekers’ used in your request is not a formal term reflected in the Health and Disability Services Eligibility Direction, we have interpreted this as persons seeking refugee or protection status as defined in the Immigration Act 2009.

The former Health and Disability Services Eligibility Direction 1997 was drafted in line with the Immigration Act 1987. Under section 5(4), it says:

A person shall be eligible for publicly funded services if he or she is in New Zealand at the time of seeking services and...

(4) Has refugee status in New Zealand or is in the process of applying for such status .

(see <https://gazette.govt.nz/notice/id/1997-go5079>)

Changes made between 2009 and 2011

The Immigration Act 2009, which came into force on 29 November 2010, included significant changes to the immigration system and the Health and Disability Service Eligibility Direction was updated in 2011 as a result (creating the Eligibility Direction 2011). The Immigration Act 2009 expanded on New Zealand’s obligations under the *United Nations Convention Relating to the Status of Refugees* (the Refugee Convention) and the *Protocol Relating to the Status of Refugees*, and codified certain obligations under:

- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations Convention against Torture (UNCAT)), and

- the International Covenant on Civil and Political Rights (ICCPR).

The expansion of New Zealand's obligations under the UNCAT and ICCPR resulted in the introduction of protected person status. This means that a person who does not meet the definition of a refugee under the Refugee Convention may be granted protection status under the UNCAT or ICCPR. The Immigration and Protection Tribunal (IPT) was also established under the Immigration Act 2009 to consider appeals against decisions made by Immigration New Zealand and to consider humanitarian appeals.

The Eligibility Direction 2011 expanded eligibility to include those persons seeking protection status in New Zealand or who had been granted protection status under section B11(a), (b), (c):

A person is eligible to receive services funded under the Act if the person is—
(a) recognised as a protected person under the Immigration Act 2009; or
(b) in the process of having a claim for recognition as a protected person determined by a refugee and protection officer; or
(c) in the process of having an appeal for recognition as a protected person determined by the Immigration and Protection Tribunal.

The Eligibility Direction 2011 under section B10(c) also expanded eligibility to include persons waiting for the outcome of an appeal to the IPT against an Immigration New Zealand decision not to recognise their refugee claim:

A person is eligible to receive services funded under the Act if the person is—
(a) recognised as a refugee under the Immigration Act 2009; or
(b) in the process of having a claim for recognition as a refugee determined by a refugee and protection officer; or
(c) in the process of having an appeal for recognition as a refugee determined by the Immigration and Protection Tribunal.

Please refer to the Te Whatu Ora website to view the Eligibility Direction 2011 and for further information: www.tewhātuora.govt.nz/our-health-system/eligibility-for-publicly-funded-health-services/eligibility-explained/.

Relevant policy documents reflecting the changes to the Eligibility Direction

One document titled *Review of Eligibility Criteria - Policy Issues for Decision* has been identified within scope of your request and is appended to this letter. This document was provided to the former Minister of Health, Hon Tony Ryall in October 2010. Some information contained in this document is out of scope of your request. As such an excerpt of this document has been taken in accordance with section 16(1)(e) of the Act. Some information has been withheld under section 9(2)(g)(i) of the Act to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown.

Where information is withheld under section 9 of the Act, I have considered the countervailing public interest in releasing that information, and consider that it does not outweigh the need to withhold it at this time.

I trust this information fulfils your request. If you wish to discuss any aspect of your request with us, including this decision, please feel free to contact the OIA Services Team on: oiagr@health.govt.nz.

Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: info@ombudsman.parliament.nz or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Manatū Hauora website at: www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests.

Nāku noa, nā



Steve Waldegrave
Associate Deputy Director General
Strategy, Policy and Legislation | Te Pou Rautaki

Excerpt from: HR20101403 Review of Eligibility Criteria - Policy Issues for Decision

Executive summary

i. In July 2010, you agreed to a review of the eligibility criteria for publicly-funded health and disability services with a narrow scope and to coincide with the implementation of the Immigration Act 2009 ('the Act'). The Eligibility Direction, which sets out the criteria and is approved by you, needs to be updated to reflect the changes that the Act will bring in after November 2010. Decisions are needed on the eligibility for new types of visa and to align the criteria with immigration policy.

The Ministry recommends that you:

- f) Agree to give effect to New Zealand's international health service commitments by making provision for protected persons and those identified by Police as 'suspected victims of human trafficking'
- g) Agree that other necessary minor technical and drafting amendments can be made to the eligibility criteria (eg, updating references to legislation).
- h) Agree that once the Ministry has drafted a Direction that reflects your decisions on the above policy issues and the other necessary minor technical and drafting changes, we can consult with DHBs on this draft Direction

Advice

Background

1. In July 2010 (HR 20100866) you agreed that the eligibility criteria for publicly-funded health and disability services needed to be updated to reflect the changes brought in by the Immigration Act 2009. You decided that a review should be undertaken with a narrow focus that retains the key eligibility policy settings.

2. ... There have also been changes to New Zealand's international commitments that need to be accounted for.

3. This paper seeks your views on the proposed solutions to all the significant policy issues that have emerged from the review (Appendix 1 summarises the proposals in a table form)....

A workshop was also held with DHB representatives to draw on their practical experience and expertise in implementing the criteria and to gather feedback on the proposals. The workshop participants largely endorsed the Ministry approach and suggested some further refinements.

4. The proposals put forward are consistent with the agreed scope and seek to confirm and consolidate existing policies, current practices within DHBs and documentation. They will not create any significant new classes of eligible or ineligible people. Some other minor technical and drafting amendments also need to be made to the Eligibility Direction (the Direction), which sets out the eligibility criteria. It should be noted that while the Direction is made to DHBs, the principles of eligibility are applied across the sector and incorporated in a range of contracts for services funded through the Ministry.

5. Where possible, the proposals have been costed, but the financial implications were often difficult to isolate and accurately quantify. The savings and costs seem to largely balance each other out, making the whole package relatively cost neutral.

6. There are also wider benefits to reviewing the eligibility criteria. s 9(2)(g)(i)

Immigration issues

7. The Immigration Act 2009 (the Act) will bring in significant changes to immigration processes, including the nature of visas and permits, as well as some policy adjustments. On 30 November 2010, when most of the key elements of the legislation come into force, all current permits will be deemed visas. The new Direction will need to accommodate this new visa-only regime. In most cases, this will largely be a question of language rather than substance. There are, however, new types of visa and some adjustments to conditions for existing permits that need to be considered.

Interim Visa

8. The legislation will introduce a new Interim Visa that is designed to fill temporary gaps between other visas. These gaps normally occur due to administrative delays. A decision is needed on the eligibility status of people on these new temporary visas.

9. Consistent with the goal of making the criteria as clear as possible, it is suggested that eligibility for the Interim Visas should be the same as for the previous visa held (ie, if the person was eligible, that will continue, and if they were not, they will not be under the Interim Visa, even if their next visa might give them entitlement).

10. This does represent a slight change in policy. At present, services would be provided during the gaps, but the patient would be billed. If the permit is granted and confers eligibility, then the bill is rescinded. The eligibility is therefore effectively determined retrospectively. The new approach is fair and allows eligibility to be assessed at the time services are sought. In some cases people will not be covered when they were previously, and in others they will be. Overall, the financial implications are expected to be negligible.

International

34. NZ has ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, supplementing the United Nations Convention against Transnational Organized Crime. This requires state parties, among other things, to provide “medical, psychological and material assistance” (Article 3). A National Plan of Action was also agreed by Cabinet in June 2009 that stated that provision should be made for health services for trafficked persons. Recognising them in the Direction should ensure they are able to access appropriate health services in particular primary, mental and sexual health services.

35. The government is also now recognising a new class of person given protection under the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR). The thresholds for establishing the need for protection are lower than those for asylum seekers, but DoL’s approach is to treat people protected under these Conventions broadly in the same way as refugees.

36. To date there have been no prosecutions of people trafficking in NZ, so the numbers of victims of trafficking are likely to be very small. DoL is expecting some applications for protection, at least at first from unsuccessful refugee claimants, but for few to meet the criteria. It is recommended that the Direction include provision for protected persons and those identified by Police as ‘suspected victims of human trafficking’ in the same way as it presently does for asylum-seekers. At a bare minimum, there would be costs for initial health screening and then ongoing health needs. For ten arrivals per year, the cost would not be less than \$50,000, but would actually be much more once their special health and community based resettlement needs had been met.

Next steps

38. A number of steps must be followed before a new Direction comes into effect. Once we have your decisions on these policy issues, the new Direction can be drafted. This will be the basis for the consultation that is required with all DHBs under the Crown Entities Act 2004. We are not expecting any surprises, as we have already canvassed our approaches with them. The views of the National Health Board and relevant government agencies will also be sought. You may wish to seek advice from your Cabinet colleagues on the new Direction, but you formally sign it. The Direction will then be gazetted.

Appendix 1: Summary Table of Key Issues

| Area | Issue | Proposed Action | Rationale |
|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Immigration | 1) Accounting for the new visa-only regime into the Direction. | In most cases this will largely be a question of language rather than substance. | As eligibility is largely based on immigration status and the Direction refers to types of permits, these changes must be made to the Direction. |
| Immigration | 2) Decide on the entitlement for the new 'Interim Visas'. Those on a valid permit (or visa) who apply for another one will now be issued with this Interim Visa if the decision can not be taken before the earlier permit (or visa) expires. | Eligibility for the new Interim Visa should be the same as for the previous visa/permit held (ie, if the person was eligible, that will continue, and if they were not, they will not be, even if their next visa might give them entitlement). | This is the clearest and simplest rule and has the added advantage of certainty (ie, an assessment of eligibility can be made without knowing the outcome of the decision on the next visa). |

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|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| International | 15) The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons requires signatories to consider providing health services to trafficked persons. The Government is also now recognising a new class of person given protection under the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR). | Include provision for protected persons and those identified by Police as 'suspected victims of human trafficking'. | This is consistent with our international commitments and the eligibility for refugees. Very small numbers are expected in these categories. |
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